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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,442	02/06/2002	Blaine D. Gaither	10018453-1	2888

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EXAMINER

LAstra, DANIEL

ART UNIT	PAPER NUMBER
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3688

NOTIFICATION DATE	DELIVERY MODE
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07/07/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/071,442	Applicant(s) GAITHER, BLAINE D.	
	Examiner DANIEL LASTRA	Art Unit 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-25 have been examined. Application 10/071,442 (SYSTEM FOR OFFERING SERVICES USING NETWORK OF UNOWNED COMPUTERS) has a filing date 02/06/2002.

Response to Amendment

2. In response to Non Final Rejection filed 01/30/2008, the Applicant filed a Request for reconsideration on 03/26/2008.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 14-16 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cellular service report Who needs a cell phone (Dialog file 646:00005704) in view of Californians Find Strings Attached to Wireless Service (Dialog file 20:03945810) and further in view of Call Waiting (Dialog file 148:12453235).

Claim 1, Cellular service report Who needs a cell phone, Californians Find Strings Attached to Wireless Service and Call Waiting teach:

A system for utilizing a collective processing capability of a plurality of computers after the computers have been sold to purchasers by a vendor, the system comprising the steps of:

entering into a plurality of agreements, each of which is between the vendor (i.e. "cellular service providers") and a different one of the purchasers (i.e. "cellular subscriber"), wherein, with respect to a specific one of the computers (i.e. "cellular phone") to be sold to said one of the purchasers (i.e. "cellular subscriber"), the vendor retains a right to use said specific one after the sale thereof (see Cellular service report paragraphs 16, 27; California Find strings paragraph 9). Cellular service report teaches that cellular service providers sell to subscribers cellular phones at discounted prices, when said subscribers agree to a long term contract with said providers (see Cellular service report paragraph 15). Cellular service report and Californian Find Strings teach that said subscriber's phone would only work in the service provider network of the service provider that sold said phone to said subscriber (see Cellular service report paragraph 27) and where said subscriber would be charged an early termination fee for cancelling the contract or switching to another carrier (see California Find string paragraph 9; see Cellular Service Report paragraph 16).

conveying, subject to said agreements, the plurality of the computers to said purchasers (See Cellular Service Report paragraphs 15-16);

interconnecting the computers via the Internet to create a network (see Cellular Service Report paragraph 35; Call Waiting paragraph 21 "Sprint PCS Network"); and

using the network to provide a service that provides the vendor with a commercial benefit (see Cellular Service Report paragraph 35; Call Waiting paragraph 21 "Internet service providers").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that a contract signed between a service provider and phone subscriber would give said service provider the right to use said subscriber phone as said subscriber's phone would only work in the service provider network of the service provider that sold said phone to said subscriber and where said subscriber would be charged an early termination fee for switching to another carrier or cancelling the contract.

Claim 2, Cellular Service Report teaches:

wherein each one of said plurality of agreements is entered into prior to the sale of a respective said specific one of the computers via the network (see paragraphs 15-16).

Claim 3, Cellular Service Report teaches:

wherein the agreement provides a purchasing incentive to each of the purchasers (See paragraph 16 "discounted phones").

Claim 4, Cellular Service Report and Call Waiting teach:

wherein, in response to a query generated by a first one of the computers and received by a second one of the computers, data is sent from the second one of the computers to the first one of the computers (see Cellular Service Report paragraph 35; Call Waiting paragraph 21 "web phone").

Claim 5, Call Waiting teaches:

wherein said data comprises an Internet web page (see paragraph 21).

Claim 14, Cellular service report Who needs a cell phone, Californians Find Strings Attached to Wireless Service and Call Waiting teach:

A system for utilizing a collective processing capability of a plurality of devices containing embedded processors, after the devices have been sold to purchasers by a vendor, the system comprising the steps of:

entering into an agreement between the vendor (i.e. "cellular service provider") and one of the purchasers (i.e. "cellular subscriber") wherein, with respect to a specific one of the devices to be sold to said one of the purchasers, the vendor retains a right to use said specific one after the sale thereof (see Cellular service report paragraphs 16, 27; California Find strings paragraph 9). Cellular service report teaches that cellular service providers sell to subscribers cellular phones at discounted prices, when said subscribers agree to a long term contract with said providers (see Cellular service report paragraph 15).

conveying at least one of the devices to a purchaser, after entering into said agreement (see Cellular Service Report paragraph 16); and

Cellular service report and Californian Find Strings teach that said subscriber's phone would only work in the service provider network of the service provider that sold said phone to said subscriber (see Cellular service report paragraph 27) and where said subscriber would be charged an early termination fee for cancelling the contract or switching to another carrier (see California Find string paragraph 9; see Cellular Service

Report paragraph 16). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that a contract signed between a service provider and phone subscriber would give said service provider the right to use said subscriber phone as said subscriber's phone would only work in the service provider network of the service provider that sold said phone to said subscriber and where said subscriber would be charged an early termination fee for switching to another carrier or cancelling the contract.

The prior art does not expressly teach repeating the previous two steps until a predetermined minimum number of said devices have been sold. However, Official Notice is taken that vendors try to sell their stock inventories in order to generate a profit. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Cellular Internet service providers would continue selling all the cellular phones that said service providers have in stock in order to generate a profit and cover their expenses.

Claim 15, Call Waiting teaches:

interconnecting the devices via the Internet to create a network (see paragraph 21); and

using the network to provide a service, used by the purchasers, that provides the vendor with a commercial benefit (see paragraph 21 "Internet cellular service providers").

Claim 16, Cellular Service Report and Call Waiting teach:

wherein, in response to a query generated by a first one of the devices and received by a second one of the devices, data is sent from the second one of the devices to the first one of the devices via the network (see Cellular Service Report paragraph 35; Call Waiting paragraph 21 "web phone").

Claim 21, Cellular service report Who needs a cell phone, Californians Find Strings Attached to Wireless Service and Call Waiting teach:

A system for utilizing a collective processing capability of a plurality of computers comprising the steps of:

(a) entering into an agreement between a vendor (i.e. "cellular service provider") of said computers and a purchaser (i.e. "subscriber") of one of the computers (i.e. "cellular phone"), wherein the vendor (i.e. "cellular service provider") retains a right to use the computer after the sale thereof;

b) conveying said one of the computers to said purchaser, after entering into said agreement;

wherein steps (a) and (b) are repeated with a different said purchaser until a predetermined minimum number of the computers have been sold(see Cellular service report paragraphs 16, 27; California Find strings paragraph 9). Cellular service report teaches that cellular service providers sell to subscribers cellular phones at discounted prices, when said subscribers agree to a long term contract with said providers (see Cellular service report paragraph 15). Cellular service report and Californian Find Strings teach that said subscriber's phone would only work in the service provider network of the service provider that sold said phone to said subscriber (see Cellular

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service report paragraph 27) and where said subscriber would be charged an early termination fee for cancelling the contract or switching to another carrier (see California Find string paragraph 9; see Cellular Service Report paragraph 16). (c) interconnecting the devices via the Internet to create a network (see Cellular Service Report paragraph 35; Call Waiting paragraph 21 "Sprint PCS Network").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that a contract signed between a service provider and phone subscriber would give said service provider the right to use said subscriber phone as said subscriber's phone would only work in the service provider network of the service provider that sold said phone to said subscriber and where said subscriber would be charged an early termination fee for switching to another carrier or cancelling the contract.

Claim 22, Call Waiting teaches:

including the additional step of using the network to provide a service (see paragraph 21).

Claim 23, Cellular Service Report and Call Waiting teaches:

wherein, in response to a query generated by a first one of the computers and received by a second one of the computers, data is sent from the second one of the computers to the first one of the computers via the network (see Cellular Service Report paragraph 35; Call Waiting paragraph 21 "web phone").

4. Claims 6, 17 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cellular service report Who needs a cell phone (Dialog file 646:00005704),

Californians Find Strings Attached to Wireless Service (Dialog file 20:03945810) and Call Waiting (Dialog file 148:12453235) in view of A World without wires (Dialog file 647:01219180)

Claims 6, 17 and 24, Cellular service report Who needs a cell phone, Californians Find Strings Attached to Wireless Service and Call Waiting do not expressly teach: wherein the network comprises a plurality of nodes, each of which includes one of the computers, and wherein one of the nodes is a vendor node; and wherein the vendor node maintains a list of all of the computers connected thereto, along with the respective IP addresses for each of the computers, and information identifying files stored on each respective one of the computers. However, A world without Wires teaches IP capable phones (see paragraph 83). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that each phone in a wireless Cellular Internet service provider such as Sprint PCS network would be a node in said network and Sprint PCS service provider would maintain a list of all the subscribers' phones that said provider is servicing with corresponding files stored in said subscribers' phones in order to be able to connect said subscribers to the network.

5. Claims 7-13, 18-20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cellular service report Who needs a cell phone (Dialog file 646:00005704), Californians Find Strings Attached to Wireless Service (Dialog file 20:03945810) and Call Waiting (Dialog file 148:12453235) in view of Jones (US 2002/0198929).

Claim 7, Jones teaches:

wherein the network comprises a plurality of peers, each of which includes one of the computers (see paragraph 28); and

wherein each of the peers in the network is a servent that acts as both a client and a server to distribute data between the peers in response to a query generated by one of the peers (see paragraphs 30-31). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Cellular service Internet providers would be motivated to provide incentive to cellular subscribers that share their phone resources with the Internet providers' master internet server, as taught by Jones in order to help said Internet service provider offload demands from their master Internet server. Cellular subscribers would be motivated to share their phones resources with Cellular Internet providers master servers, as taught by Jones as said cellular subscribers would be awarded with incentives for said sharing.

Claim 8, Jones teaches:

wherein said query is distributed between successive said peers until the query is received by one of the peers having access to said data (see paragraphs 30-31); and

said data is distributed between successive said peers until the data is received by said one of the peers that generated the query (see paragraphs 30-31).

Claim 9, Jones teaches:

wherein said network includes said computers used by entities not in privity with the vendor (see paragraphs 30-31).

Claim 10, Jones teaches:

wherein the right to use said specific one of the computers includes the right to use low-priority processor cycles of the specific one of the computers to effect said service (see paragraphs 30-31).

Claim 11, Jones teaches:

wherein the right to use said specific one of the computers includes the right to use a predetermined amount of processor time of the specific one of the computers to effect said service, within a fixed interval of time (see paragraphs 30-31).

Claim 12, Jones teaches:

wherein the network is used to provide said service after a predetermined minimum number of the computers have been conveyed to the client (see paragraphs 30-31).

Claim 13, Jones teaches:

wherein said computers include devices having an embedded processor (see paragraphs 30-31).

Claim 18, Jones teaches:

wherein the network comprises a plurality of peers, each of which includes one of the devices (see paragraph 28); and

wherein each of the peers in the network is a servent that acts as both a client and a server to distribute data between the peers in response to a query generated by one of the peers (see paragraphs 30-31).

Claim 19, Jones teaches:

wherein the right to use said specific one of the devices includes the right to use low-priority processor cycles of the specific one of the devices to effect said service (see paragraphs 30-31).

Claim 20, Jones teaches:

wherein the right to use said specific one of the devices includes the right to use a predetermined amount of processor time of the specific one of the devices to effect said service, within a fixed interval of time (see paragraphs 30-31).

Claim 25, Jones teaches:

wherein the network comprises a plurality of peers, each of which includes one of the computers (see paragraph 28); and

wherein each of the peers in the network is a servent that acts as both a client and a server to distribute data between the peers in response to a query generated by one of the peers (see paragraphs 30-31).

Response to Arguments

6. Applicant's arguments filed 03/26/2008 have been fully considered but they are not persuasive. The Applicant argues that CSR and Californian do not teach that "the contract signed between a service provider and phone subscriber gives said service provider the right to use said subscriber phone" because according to the Applicant, only the subscriber use the cell phone and by the extension, the cellular network provided by the cellular service provider and an early termination fee does not constitute, according to the Applicant, a use of the phone by the cellular service provider. Furthermore, the Applicant argues that the fact the cel phone may only work in

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the network of the service provider is not a right, according to the Applicant, retained by a vendor in an agreement with the purchaser. The Examiner answers that contrary to Applicant's argument, the contract signed between a service provider and phone subscriber gives said service provider the right to use said subscriber phone because when a service provider provides to a subscriber a phone at discount for signing a contract with said service provider, the owner of said phone, prior the expiration of said contract, is the service provider and not the subscriber because for said subscriber to change carrier prior to the contract expiration date, said subscriber would have to purchase said phone from said service provider by paying an early termination fee. Said contract gives said service provider the right to use said subscriber phone because said service provider is the only one that has the right to provide a signal and an network connection to said phone (see Cellular service report paragraph 16). For example, when a subscriber signs a 2 year contract with Sprint PCS, said contract provides said subscriber with a Sprint PCS phone at discount. For example, a phone with retail value of \$170 can be provided to a subscriber for \$20 with the signing of a 2 year contract. With the signing of said contract, Sprint PCS is the only carrier that has the right to provide service to said phone, by giving said phone, a phone signal and network connection. For said subscriber to switch to another carrier, prior to the expiration of said contract, said subscriber would have to purchase said phone from Sprint PCS by paying Sprint PCS an early terminal fee, which would be the discount said subscriber received for signing said contract, which in this example, would be the difference between the retail value of the phone (i.e. \$170) and the value that the customer paid

(i.e. 20) which would amount, in this example, for an early termination fee of \$150. Therefore, contrary to Applicant's argument, the prior arts teach Applicant's claimed invention.

The Applicant argues that the prior arts do not teach the concept of continue selling all the cellular phones that said service providers have in stock in order to cover their basis. The Examiner answers that Official Notice is taken that vendors try to sell their stock inventories in order to generate a profit. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Cellular Internet service providers would try to continue selling all the cellular phones that said service providers have in stock in order to generate a profit and cover their expenses, as it is old and well known to do so.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The official Fax number is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/

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July 1, 2008